

***IN THE DISTRICT COURT OF THE UNITED STATES***

***for the Western District of New York***

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**MAY 2015 GRAND JURY  
(Impaneled 05/08/2015)**

**THE UNITED STATES OF AMERICA**

**-vs-**

**INDICTMENT**

**DONALD GARDNER, JR.**

**Violations:**

Title 18, United States Code,  
Sections 2251(a), 2252A(a)(2)(A) and  
2252A(a)(5)(B)  
(5 Counts)

**COUNT 1**

**(Production of Child Pornography)**

**The Grand Jury Charges That:**

On or about February 2, 2014, at approximately 17:15:04 UTC, in the Western District of New York, and elsewhere, the defendant, DONALD GARDNER, JR., did knowingly employ, use, persuade, induce, entice, and coerce a minor, that is, Victim 1, a person under the age of 18 years known to the Grand Jury, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, that is, an image identified as Image A, knowing and having reason to know that the visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce; and knowing and having reason to know that the visual depiction would be transported and transmitted in and affecting interstate and foreign commerce; and the visual

depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer; the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce; and the visual depiction was actually transported and transmitted in and affecting interstate and foreign commerce.

**All in violation of Title 18, United States Code, Sections 2251(a) and 2251(e).**

**COUNT 2**

**(Production of Child Pornography)**

**The Grand Jury Further Charges That:**

On or about February 2, 2014, at approximately 17:20:40 UTC, in the Western District of New York, and elsewhere, the defendant, DONALD GARDNER, JR., did knowingly employ, use, persuade, induce, entice, and coerce a minor, that is, Victim 1, a person under the age of 18 years known to the Grand Jury, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, that is, an image identified as Image B, knowing and having reason to know that the visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce; and knowing and having reason to know that the visual depiction would be transported and transmitted in and affecting interstate and foreign commerce; and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer; the visual depiction was actually transported and transmitted using any means

and facility of interstate and foreign commerce; and the visual depiction was actually transported and transmitted in and affecting interstate and foreign commerce.

**All in violation of Title 18, United States Code, Sections 2251(a) and 2251(e).**

**COUNT 3**

**(Production of Child Pornography)**

**The Grand Jury Further Charges That:**

On or about February 2, 2014, at approximately 17:25:26 UTC, in the Western District of New York, and elsewhere, the defendant, DONALD GARDNER, JR., did knowingly employ, use, persuade, induce, entice, and coerce a minor, that is, Victim 1, a person under the age of 18 years known to the Grand Jury, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, that is, an image identified as Image C, knowing and having reason to know that the visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce; and knowing and having reason to know that the visual depiction would be transported and transmitted in and affecting interstate and foreign commerce; and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer; the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce; and the visual depiction was actually transported and transmitted in and affecting interstate and foreign commerce.

**All in violation of Title 18, United States Code, Sections 2251(a) and 2251(e).**

**COUNT 4**

**(Receipt of Child Pornography)**

**The Grand Jury Charges That:**

On or about February 2, 2014, in the Western District of New York, and elsewhere, the defendant, DONALD GARDNER, JR., did knowingly receive, and attempt to receive, child pornography, as defined in Title 18, United States Code, Section 2256(8), that is, 3 image files, that had been shipped and transported using any means and facility of interstate and foreign commerce, and that had been shipped and transported in and affecting interstate and foreign commerce by any means, including computer.

**All in violation of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(b)(1).**

**COUNT 5**

**(Possession of Child Pornography)**

**The Grand Jury Charges That:**

Between on or about February 2, 2014, and on or about May 7, 2014, in the Western District of New York, and elsewhere, the defendant, DONALD GARDNER, JR., did knowingly possess material, that is, a Facebook account in the name of Donnie.gardner.965, that contained images of child pornography, as defined in Title 18, United States Code, Section 2256(8), that involved a prepubescent minor and a minor who had not attained 12 years of age, that had been shipped and transported using any means and facility of interstate and foreign commerce; that had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer; and

that was produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.

**All in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2).**

**DATED:** Buffalo, New York, September 24, 2015.

WILLIAM J. HOCHUL, JR.  
United States Attorney

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A TRUE BILL:

s/FOREPERSON